

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

BENJAMIN KARL SMITH,

CV-18-150-GF-BMM-JTJ

Plaintiff,

vs.

ORDER

D.J. GODFREY, WARDEN
FLETCHER, ASST. WARDEN
POWELL, MR. HENSON, CHAPLIN
DE LELLA, and MR. MADRID,

Defendants.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on March 27, 2020. (Doc. 50). Neither party filed objections. The Court reviews for clear error any portion to which no party specifically objected. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Smith filed a complaint alleging that Crossroads Correctional Center violated his various constitutional and statutory rights by refusing to allow him to

attend Jumah Services (Muslim congregational prayer service). (Doc. 2).

Defendants were ordered to respond to the Complaint. (Doc 7).

Defendants filed motions for summary judgment on January 10, 2020. (Doc. 39, 44). Smith failed to respond, and the Magistrate Judge issued an Order to Show Cause on February 13, 2020, requiring Smith to demonstrate why the case should not be dismissed for failure to prosecute. (Doc. 49). The Order to Show Cause specifically warned “[a] failure to respond to this Order will result in a recommendation that this matter be dismissed for failure to prosecute.” (Doc. 49 at 1-2). Again, Smith failed to respond. The Magistrate Judge concluded that the case should be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. 50).

In order for a case to be dismissed for failure to prosecute or comply with a court order, the Court “must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citation omitted). The Magistrate Judge concluded that the first, second, third, and fourth factors all weigh in favor of dismissal. The fifth factor weighs against dismissal because public policy favors the disposition of cases on their merits. The Court

finds no clear error in the Magistrate Judge's conclusion. The weight of the factors favors dismissal for failure to prosecute.

IT IS ORDERED:

1. The Findings and Recommendations (Doc. 50) are **ADOPTED IN FULL**.
2. This matter is **DISMISSED** pursuant to Federal Rule of Civil Procedure 41(b). The Clerk is directed to close this matter, enter judgment pursuant to Federal Rule of Civil Procedure 58, and terminate all pending motions.
3. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith

DATED this 21st day of April, 2020.



Brian Morris, Chief District Judge
United States District Court